IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JASON PIETRZYCKI, on behalf of himself and all other plaintiffs similarly situated,	)	
Plaintiffs,	)	
v.	)	Case No.: 14-cv-6546
HEIGHTS TOWER SERVICE, INC., and MARK MOTTER	)	
Defendants.	)	

MOTION TO STRIKE DEFENDANTS' AFFIRMATIVE DEFENSES TO COLLECTIVE ACTION COMPLAINT

Plaintiff, Jason Pietrzycki on behalf of himself and all other plaintiffs similarly situated ("Plaintiff"), states as follows as its Motion to Strike Defendants' Affirmative Defenses:

Facts

Defendants have asserted several affirmative defenses in their "Answer and Affirmative Defenses to Collective Action Complaint," a copy of which is attached hereto as Exhibit A. The Affirmative Defenses provide Plaintiff with absolutely no indication as to any facts supporting them, are precisely the type that courts in this Judicial District have deemed inappropriate, and therefore should be stricken.

Affirmative defenses are important issues that should be the focus of early informal discovery because of the parties' agreement at the November 25, 2014 status conference to make efforts to initially limit their discovery. For example, if affirmative defenses truly negate the claims in this case, it is important that the facts supporting them be identified early in the case to address those defenses early.

Defendants' Affirmative Defenses are laid out in paragraphs 1-12 as follows:

1. Plaintiffs have failed to state a claim or cause of action upon which any relief can be granted against these Defendants.

2. Plaintiffs have failed to adequately please and establish the necessary elements for collection action treatment. Plaintiff, therefore, should be prohibited from maintaining this case as a collective action.

3. Plaintiffs' Complaint, and each claim and cause of action therein, is bared, in whole or in part, to the extent Plaintiffs and potential opt-in Plaintiffs have ever recovered or may have recovered, in other legal or administrative proceedings, any monies for the wages, benefits, or other compensation allegedly at issue in this action.

4. Plaintiffs' alleged claims and causes of action are barred by the doctrines of laches and estoppel by reason of Plaintiff's and potential opt-in Plaintiffs' actions and course(s) of conduct.

5. The alleged claims and causes of action are barred by the applicable Statutes of Limitations, including but not limited to under 29 U.S.C. § 255.

6. Defendants, at all material times, acted in good faith and had reasonable grounds for believing that their actions were in compliance with the FLSA, the IWPCA, and all other applicable laws, rules, and regulations.

7. Defendants did not act willfully or with knowledge or reckless disregard as to whether their conduct violated the FLSA, the IWPCA, and all other applicable laws, rules, and regulations.

8. Plaintiffs' alleged claims and causes of action, all of which are otherwise expressly denied, are barred under the *de minimus* doctrine.

9. The alleged work activities as described by Plaintiffs within their Complaint are not compensable as eligible for overtime compensation under the Portal-to-Portal Pay, 29 U.S.C. § 254 and its applicable rules and regulations.

10. Plaintiffs and the potential opt-in Plaintiffs, in the exercise of reasonable diligence, could/should have mitigated their alleged monetary damages and have not mitigated such alleged damages. By reason thereof, Plaintiffs and all potential opt-in Plaintiffs are barred from recovering any damages from Defendants.

11. Defendants are entitled to a set-off in the amount of all monies paid to Plaintiff's and others who may be deemed similarly and constituting wages or compensation paid to them for "drive time," "ride time," or otherwise.

12. Defendants reserve the right to amend their Answer and specifically add additional affirmative and factual defenses as discovery proceeds.

Argument

Defendants' Affirmative Defenses Should Be Stricken As Insufficient Pursuant To Federal Rule of Civil Procedure 12(f).

Pursuant to Federal Rule of Civil Procedure 12(f), the Court can strike "any insufficient defense…." Fed.R.Civ.P. 12(f). Affirmative defenses, as pleadings, are subject to all pleading requirements of the Federal Rules of Civil Procedure and must therefore set forth a short and plain statement of the defense. Fed.R.Civ.P.. 8(a); Heller v. Midwhey Powder Co., Inc., 883 F.2d 1286, 1294 (7th Cir.1989)("Affirmative defenses are pleadings and, therefore, are subject to all pleading requirements of the Federal Rules of Civil Procedure.").

Although motions to strike are typically not favored, where they "remove unnecessary clutter from the case, they serve to expedite, not delay" the resolution of a case. Heller at 1294. Affirmative defenses based on "bare bones conclusory allegations" are properly stricken pursuant to Rule 12(f). Id., Visco Fin. Servs. v. Siegel, No. 08-CV-4029, 2008 WL 4900530, at *5 (N.D. Ill. Nov. 13, 2008)("Affirmative defenses are pleadings, and thus must set forth a short plain statement of the claim showing that the pleader is entitled to relief").

Simply naming a legal theory without indicating how it is connected to the case at hand is not sufficient to withstand a motion to strike because an affirmative defense must include allegations relating to "all material elements of the claim asserted." Renalds v. S.R.G. Rest. Group, 119 F. Supp. 2d 800, 802-803 (N. D. Ill. 2000). See also, Surface Shields, Inc. v. Poly-Tak Prot. Sys., 213 F.R.D. 307 (N.D. Ill. 2003). The standard for pleadings affirmative defenses is heightened in light of the Supreme Court's holdings in Bell Atlantic Corp. v. Twombly, 550

U.S. 544, 555-56 (2007) and Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009); See OSF Healthcare Sys. v. Banno, No. 08-CV-1096, 2010 WL 431963, at *2 (C.D. Ill. Jan. 29, 2010)(striking affirmative defense for failure to plead sufficient facts under Iqbal and Twombly); FDIC v. Vann, 11 C 3491, 2013 WL 704478 (N.D. Ill. Jan. 23, 2013).[1]

Under the standards set forth above, these affirmative defenses must be stricken. See e.g., Heller at 1294; see also, Visco Fin. Servs. v. Siegel, No. 08-CV-4029, 2008 WL 4900530, *5 (N.D. Ill. Nov. 13, 2008)("Affirmative defenses are pleadings, and thus must set forth a short plain statement of the claim showing that the pleader is entitled to relief"); Reis Robotics USA, Inc. v. Concept Indus., 462 F. Supp. 2d 897, 905-906 (N.D. Ill. 2006)(striking failure to state a claim defense that did not refer to any particular count of complaint and did not notify plaintiff of any specific infirmities in complaint).

The alleged affirmative defenses identify no facts whatsoever. Nor do the affirmative defenses negate the Plaintiffs' claims. As such, they all should be stricken without prejudice.

[1] But see Ivanov v. Nyhus, 14-cv-382, 2014 WL 5307936 (W.D. Wis. Oct. 16, 2014)(noting that courts apply different standards to the pleading requirements for affirmative defenses but noting that it was unnecessary to resolve that issue because there were no facts alleged in support of the defenses).

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests this Court to strike Affirmative Defenses 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12; and for such other relief as this Court deems appropriate.

Dated: November 26, 2014

Respectfully submitted,
JASON PIETRZYCKI

By: /s/ David J. Fish
One of his Attorneys

David J. Fish
THE FISH LAW FIRM, P.C.
200 E 5th Ave Suite 123
Naperville, IL 60540
T: 630-355-7590
F: 630-929-7590